IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (WCA) No.538 of 2003.

Reserved on:24.04.2007.

Decided on:May 08, 2007

The Managing Director, H.P.State Forest Corp. & Anr.
…..Appellant.

VERSUS

Roshan Lal & Ors. …..Respondents.

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellants: **Mr.Rakesh Jaswal, Advocate.**

For Respondent No.1: **Mr.G.R.Palsra, Advocate.**

For Respondent No.2: **Mr.Sanjeev Kuthiala, Advocate.**

For Respondent No.4: **Mr.M.L.Chauhan, Addl.A.G.**

Kuldip Singh, Judge

The Managing Director, H.P. State Forest Corporation Ltd. and Divisional Manager, H.P. State Forest Corporation Ltd., Kullu have filed this appeal against the order dated 28.6.2003 passed by Commissioner Workmen's Compensation (S.D.M.), Chachyot at Gohar, District Mandi, H.P. in File No.3/91.

2. The brief facts are that Roshan Lal was allegedly serving as labourer. The respondents No.2 and 3 were given the work of felling of trees and to make scants thereof by proforma respondent No.4. He was paid Rs.40/- per day as wages. On 8.5.1991 when he

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment ?Yes***

was felling the trees he met with an accident and was seriously injured during the course of employment. He was referred to Civil Hospital, Mandi and thereafter to P.G.I., Chandigarh and then to Karan Singh Memorial Orthopedic Hospital & Research Centre, Amritsar but he got no relief. On 31.8.1991 his left leg was removed at Civil Hospital, Mandi and he was discharged on 11.10.1991. According to him, he has suffered 70% permanent disability due to this accident and, therefore, respondents are liable to pay compensation to him. It is also his case that he has spent Rs.70,000/- on his treatment. He has prayed Rs.2 lacs compensation along with interest and 50% penalty from the respondents. At the time of accident, he was 26 years old.

3. The Forest Corporation in its reply dated 19.7.1994 has taken the plea that applicant Roshan Lal was never employed by the Corporation. The Corporation has also denied that applicant has suffered 70% permanent disability. The Corporation has taken the stand that Tek Chand respondent was appointed as Labour Supply Mate by the Corporation for executing the work and as per clause 20 of the agreement dated 10.2.1990 Labour Supply Mate shall be liable to pay the compensation and not the Corporation to the labour employed by him under the Workmen's Compensation Act, 1923 (for short 'the Act'). The other respondents did not file any reply.

4. The Commissioner vide impugned order has awarded Rs.1,55,000/- compensation to the claimant to be recovered from respondents jointly and severally. The respondents were directed to

deposit the amount of compensation within 30 days from the date of order failing which respondents shall be liable to pay penalty and interest under the Act. The appellants have filed the present appeal against the impugned order. On 3.9.2003 Registry raised the objection that appellants in the present appeal were not party before the learned Commissioner and, therefore, raised the question of maintainability of the appeal. This Court on 3.11.2003 ordered the registration of the appeal subject to objection No.1 of the Registry. From the record of the Commissioner it is clear that Corporation has filed the reply and contested the claim of the applicant. It appears Corporation was not shown party in the memo of parties before the Commissioner, therefore, instead of Corporation in the memo of parties State of Himachal Pradesh has been shown as party in the impugned order. The appellants are the officers of the Corporation. They have filed the appeal to protect the interest of the Corporation, therefore, the objection of the Registry, referred above, is overruled and it is held that appeal filed by the appellants against the impugned order is competent.

5. The appeal has been admitted on the following substantial question of law:-

> *Whether the award passed by the Commissioner (S.D.M.) under Workmen's Compensation Act, 1923, Chachiot at Gohar District Mandi is against the terms and conditions of Clause 20 of the*

> *agreement entered into between the appellant –H.P. State Forest Corporation and its Contractors respondents No.2 and 3, namely, Moti Ram and Tek Chand.*

6. The learned counsel for the appellants has submitted that in view of the clause 20 of the agreement of the Corporation with Tek Chand, Corporation is not liable to pay compensation or any other liability to the applicant. According to him, liability, if any, is of Tek Chand. The clause 20 relied by counsel for the appellants is reproduced herein below:-

> "The contractor / labour supply mate and not the H.P. State Forest Corporation Ltd. shall be liable to pay any compensation to the labour employed by him under the workmen's Compensation Act VIII of 1923, and the rules framed thereunder and also agrees to bear all liabilities as a result of implementation of labour laws."

7. It has not been denied that even though the work was given to Tek Chand by the Corporation but still Corporation remains the principle employer and, therefore, Corporation is to satisfy the liability to pay compensation under the Act. In ***H.P. State Forest Corporation versus Sheesh Ram & Others, 2000 (1) SLJ 709,*** this Court has held that under the Act principle employer has to satisfy the liability to pay compensation and it also has the right to recover the

same from the contractor in terms of Section 12(2) of the Act. The statutory liability cannot be modified by the agreement. Therefore, appellants cannot take shelter of clause 20 of the agreement with Tek Chand to escape the liability for payment of compensation to the claimant. Therefore, even if there is an agreement of the Corporation with the contractors Moti Ram and Tek Chand to pay compensation to the workman under the Act still the Corporation is under statutory duty to pay compensation to the applicant being the principle employer. No case for interference is made out by the appellants. The substantial question of law referred to above is decided against the appellants.

8. No other point was urged.

9. In view of the above discussion, the appeal is dismissed and the impugned order dated 28.6.2003 passed by the Commissioner under Workmen's Compensation (S.D.M.), Chachyot at Gohar is upheld with no order as to costs.

(Kuldip Singh)
Judge.

May 08, 2007
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